

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-252

In the Matter of

Amendment of Section 73.202(b), RM-8099
Table of Allotments.
FM Broadcast Stations.
(Leesburg and Tavares, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 15, 1992; Released: November 19, 1992

Comment Date: January 11, 1993
Reply Comment Date: January 26, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed on behalf of J. J. Taylor Companies, Inc. ("petitioner"), licensee of Station WXXL(FM), Channel 294C1, Leesburg, Florida, proposing the reallocation of Channel 294C1 from Leesburg, Florida to Tavares, Florida, as that community's first local service. Petitioner also seeks the modification of its license accordingly.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules. In this regard, petitioner's proposal is mutually exclusive with the allotment of Channel 294C1 to Tavares, as it proposed no change in the present reference coordinates for Channel 294C1 at Tavares.¹ Petitioner states that the proposed allotment of Channel 294C1 to Tavares will place a 70 dBu signal over the community of Tavares. Petitioner argues that the reallocation of Channel 294C1 from Leesburg to Tavares will result in a preferential arrangement of allotments. Tavares (population 7,383) would receive its first local transmission service and Leesburg (population 14,903) will continue to receive local aural transmission service from Stations WLBE(AM) and WQBQ(AM).² Petitioner advises that while Leesburg is currently larger in population, Tavares is growing faster than Leesburg. Petitioner states that neither Leesburg nor Tavares is located in an urbanized area.

3. An engineering analysis has determined that Channel 294C1 can be allotted to Tavares in compliance with the Commission's minimum distance separation requirements with a site restriction 30.1 kilometers (18.7 miles) southeast of the community at the licensed site for Channel 294C1 at Leesburg. We note that the proposed allotment of Channel

294C1 to Tavares is short-spaced to a pending application (BPH-8911291B) for Station WDFL(FM), Channel 295C1, Cross City, Florida.³

4. We believe the public interest may be served by proposing to reallocate Channel 294C1 from Leesburg to Tavares, Florida, since Tavares could receive its first local transmission service. As requested, we will propose to modify petitioner's license for Station WXXL(FM) to specify Tavares as its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 294C1 at Tavares or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

| City | Channel No. | |
|-------------------|-------------|----------|
| | Present | Proposed |
| Leesburg, Florida | 294C1 | -- |
| Tavares, Florida | -- | 294C1 |

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **January 11, 1993**, and reply comments on or before **January 26, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John M. Spencer
Leibowitz & Spencer
One S.E. Third Avenue, Suite 1450
Miami, Florida 33131
(Counsel for J.J. Taylor Companies, Inc.)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and com-

¹ The coordinates for Channel 294C1 at Tavares are North Latitude 28-33-31 and West Longitude 81-35-38.

² Population figures are taken from the 1990 U.S. Census.

³ The Commission is currently considering a proposal to

change the community of license for Station WDFL(FM), Channel 295C1, from Cross City, Florida to Bronson, Florida. See *Notice of Proposed Rule Making*, 7 FCC Rcd 5941 (1992).

ment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cui - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as

they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.